

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 1835

57th Legislature
2001 Regular Legislative Session

Passed by the House April 13, 2001
Yeas 88 Nays 0

Speaker of the House of Representatives

Speaker of the House of Representatives

Passed by the Senate April 6, 2001
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1835** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

Chief Clerk

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 1835

AS AMENDED BY THE SENATE

Passed Legislature - 2001 Regular Session

State of Washington 57th Legislature 2001 Regular Session

By House Committee on Finance (originally sponsored by Representatives Doumit, Sump, Schoesler and Clements)

Read first time 03/08/2001. Referred to Committee on .

1 AN ACT Relating to a forest products commission; amending RCW
2 42.17.31907 and 43.135.055; adding a new section to chapter 82.32 RCW;
3 and adding a new chapter to Title 15 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that the creation of
6 a forest products commission would assist in expanding the state's
7 economy, because:

8 (1) Marketing is a dynamic and changing part of the Washington
9 forest products industry and a vital element in expanding the state
10 economy;

11 (2) The sale in the state and export to other states and abroad of
12 forest products made in the state contribute substantial benefits to
13 the economy of the state, provide a large number of jobs and sizeable
14 tax revenues, and are key components of the health of many local
15 communities because many secondary businesses are largely dependent on
16 the health of the forest products industry; and

17 (3) Forest products are made from a renewable resource and are more
18 environmentally sound than many alternative products.

1 NEW SECTION. **Sec. 2.** Unless the context clearly requires
2 otherwise, the definitions in this section apply throughout this
3 chapter.

4 (1) "Commission" means the forest products commission.

5 (2) "Department" means the department of agriculture.

6 (3) "Director" means the director of the department of agriculture
7 or the director's authorized representative.

8 (4) "Forest products" or "timber" means trees of any species
9 maintained for eventual harvest whether planted or of natural growth,
10 standing or down, on privately or publicly owned land, and also
11 includes wood products related thereto, but does not include Christmas
12 trees or other trees on which the timber excise tax provided under
13 chapter 84.33 RCW is not imposed.

14 (5) "Person" includes any individual, corporation, firm,
15 partnership, trust, association, or any other organization of
16 individuals.

17 (6) "Producer" means any person who harvests timber in Washington
18 state and pays the timber excise tax imposed under chapter 84.33 RCW on
19 at least two million board feet in a calendar year or in four
20 consecutive calendar quarters.

21 (7) "Eastern Washington" means that portion of the state lying east
22 of the Cascade mountain range.

23 (8) "Western Washington" means that portion of the state lying west
24 of the Cascade mountain range.

25 NEW SECTION. **Sec. 3.** (1)(a) There is created a commodity
26 commission to be known and designated as the Washington forest products
27 commission. The commission is composed of nine voting members. The
28 commission may, in its sole discretion, add or remove nonvoting ex
29 officio members to the commission. Of the members, six shall be from
30 western Washington, and three shall be from eastern Washington. After
31 the initial election of commission members, however, if a position
32 cannot be filled by a member from eastern Washington within sixty days
33 from the date on which nominations may first be received because of a
34 lack of candidates, the position may be filled by a member from western
35 Washington. Under no circumstances will there be less than two board
36 members from eastern Washington. If a position was filled by a member
37 from western Washington because of a lack of candidates from eastern
38 Washington, and districts are not used for the nomination and election

1 of members, then a person from eastern Washington must fill the next
2 available vacancy or open position at the next election to bring the
3 number of representatives from eastern Washington up to three members.
4 All members shall be elected by the entire group of producers unless
5 the commission creates districts for the members as authorized in
6 section 5 of this act. If districts are used for the nomination and
7 election of commission members, and it does not appear that one of the
8 positions from eastern Washington will be filled because of a lack of
9 candidates, then a commission member who resides in western Washington
10 must be elected by the entire group of producers as an at-large member.
11 The position of the western Washington member who is elected as an at-
12 large member shall be filled by a member from eastern Washington at the
13 expiration of the term of the at-large member. If districts are not
14 used for the nomination and election of members, the commission shall
15 strive to achieve representation on the commission from the different
16 geographic regions of the state.

17 (b) Of the six members from western Washington, three members must
18 have annual harvests of more than seventy-five million board feet, and
19 three members must have annual harvests between two million board feet
20 and seventy-five million board feet.

21 (c) Of the two members from eastern Washington, one member must
22 have an annual harvest greater than forty million board feet, and one
23 member must have an annual harvest between two million board feet and
24 forty million board feet. If there is a third member from eastern
25 Washington, the only harvest requirement is that the member have an
26 annual harvest of at least two million board feet.

27 (2) The members must be citizens and residents of this state, and
28 over the age of twenty-one years. Each member must currently, and for
29 the five years last preceding his or her election, be actually engaged
30 in producing forest products within the state of Washington, either
31 individually or as an officer of a corporation, firm, partnership,
32 trust, association, or business organization at the level of production
33 required to qualify as a producer. Each member must also derive a
34 substantial amount of his or her income from the production of forest
35 products. The qualifications set forth in this section apply
36 throughout each member's term of office.

37 (3) No more than one member of the commission may be employed by,
38 or connected in a proprietary capacity with, the same corporation,
39 firm, partnership, trust, association, or business organization.

1 (4) Five voting members of the commission constitute a quorum for
2 the transaction of all business and the carrying out of the duties of
3 the commission.

4 (5) The regular term of office of the members is four years from
5 November 1st following their election and until their successors are
6 elected and qualified. However, the first terms of the members elected
7 November 1, 2001, is as follows: Positions one, four, and seven
8 terminate November 1, 2003; positions two, five, and eight terminate
9 November 1, 2004; and positions three, six, and nine terminate November
10 1, 2005.

11 NEW SECTION. **Sec. 4.** (1) The director shall call the initial
12 meeting of producers of forest products for the purpose of nominating
13 their respective members of the commission. Public notice of the
14 meeting shall be given by the director in the manner the director
15 determines is appropriate. A producer may on his or her own motion
16 file his or her name with the director for the purpose of receiving
17 notice of the meeting. The nonreceipt of the notice by any interested
18 person does not invalidate the proceedings.

19 (2) Prior to the nomination of commission members, the department
20 of revenue shall provide the director with a list of all qualified
21 producers within the state based upon tax records of the department.

22 (3) For the initial election of commission members, any qualified
23 producer may be nominated orally for a commissioner position at the
24 meeting convened by the director. Nominations may also be made within
25 five days prior to the meeting by a written petition filed with the
26 department, signed by at least five producers who reside in the state.
27 If the director determines that one of the positions from eastern
28 Washington will go unfilled because of a lack of candidates, the
29 director shall announce that this position shall be filled by a member
30 from western Washington. If the position designated for eastern
31 Washington is filled by a member from western Washington because of a
32 lack of candidates from eastern Washington, this position shall be
33 designated as position number seven by the director for purposes of
34 section 3(5) of this act. Under no circumstances will there be less
35 than two board members from eastern Washington.

36 (4) The initial members of the commission shall be elected by
37 secret mail ballot under the supervision of the director at the same
38 time the referendum is submitted under section 12 of this act calling

1 for the creation of the commission and the imposition of the initial
2 assessment. If a nominee does not receive a majority of the votes on
3 the first ballot, a run-off election shall be held by mail in a similar
4 manner between the two candidates for the position receiving the
5 largest number of votes.

6 NEW SECTION. **Sec. 5.** (1) After the initial election of commission
7 members, the commission shall establish rules for electing commission
8 members, including the method used for notification, nominating, and
9 voting. The commission may create commission districts and boundaries,
10 and may also establish a weighted voting procedure for election of
11 commission members. The commission shall hold its annual meeting
12 during the month of October each year for the purpose of nominating
13 commission members and the transaction of other business. Public
14 notice of the meeting shall be given by the commission in the manner it
15 determines is appropriate. A producer may on his or her own motion
16 file his or her name with the commission for the purpose of receiving
17 notice of the meeting. The nonreceipt of the notice by any interested
18 person does not invalidate the proceedings.

19 (2) Prior to the nomination of commission members, the department
20 of revenue shall provide the commission with a list of all qualified
21 producers within the state based upon tax records of the department.

22 NEW SECTION. **Sec. 6.** (1) In the event a position becomes vacant
23 due to resignation, disqualification, death, or for any other reason,
24 the position until the next annual meeting shall be filled by vote of
25 the remaining members of the commission. At the annual meeting a
26 commissioner shall be elected to fill the balance of the unexpired
27 term.

28 (2) Each member of the commission shall be compensated in
29 accordance with RCW 43.03.230 and shall be reimbursed for actual travel
30 expenses incurred in carrying out the provisions of this chapter.
31 Employees of the commission may also be reimbursed for actual travel
32 expenses when on official commission business.

33 NEW SECTION. **Sec. 7.** Obligations incurred by the commission and
34 liabilities or claims against the commission may be enforced only
35 against the assets of the commission in the same manner as if it were
36 a corporation and no liability for the debts or actions of the

1 commission exists against either the state of Washington or any
2 subdivision or instrumentality thereof or against any member, officer,
3 employee, or agent of the commission in his or her individual capacity.
4 The members of the commission, including employees of the commission,
5 may not be held responsible individually or any way whatsoever to any
6 person for errors in judgment, mistakes, or other acts, either of
7 commission or omission, as principal, agent, person, or employees,
8 except for their own individual acts of dishonesty or crime. A person
9 or employee may not be held responsible individually for any act or
10 omission of any other members of the commission.

11 NEW SECTION. **Sec. 8.** The powers and duties of the commission
12 include:

13 (1) To elect a chairman and such officers as the commission deems
14 advisable. The commission shall adopt rules for its own governance,
15 which provide for the holding of an annual meeting for the election of
16 officers and transaction of other business and for such other meetings
17 as the commission may direct;

18 (2) To adopt any rules necessary to carry out the purposes of this
19 chapter, in conformance with chapter 34.05 RCW;

20 (3) To administer and do all things reasonably necessary to carry
21 out the purposes of this chapter;

22 (4) At the pleasure of the commission, to employ a treasurer who is
23 responsible for all receipts and disbursements by the commission and
24 the faithful discharge of whose duties shall be guaranteed by a bond at
25 the sole expense of the commission;

26 (5) At the pleasure of the commission, to employ and discharge
27 managers, secretaries, agents, attorneys, and employees and to engage
28 the services of independent contractors as the commission deems
29 necessary, to prescribe their duties, and to fix their compensation;

30 (6) To engage directly or indirectly in the promotion of Washington
31 forest products and managed forests, and shall in the good faith
32 judgment of the commission be in aid of the marketing, advertising, or
33 sale of forest products, or of research related to such marketing,
34 advertising, or sale of forest products, or of research related to
35 managed forests;

36 (7) To enforce the provisions of this chapter, including
37 investigating and prosecuting violations of this chapter;

1 (8) To acquire and transfer personal and real property, establish
2 offices, incur expense, and enter into contracts. Contracts for
3 creation and printing of promotional literature are not subject to
4 chapter 43.78 RCW, but such contracts may be canceled by the commission
5 unless performed under conditions of employment which substantially
6 conform to the laws of this state and the rules of the department of
7 labor and industries. The commission may create such debt and other
8 liabilities as may be reasonable for proper discharge of its duties
9 under this chapter;

10 (9) To maintain such account or accounts with one or more qualified
11 public depositaries as the commission may direct, to cause moneys to be
12 deposited therein, and to expend moneys for purposes authorized by this
13 chapter by drafts made by the commission upon such institutions or by
14 other means;

15 (10) To cause to be kept and annually closed, in accordance with
16 generally accepted accounting principles, accurate records of all
17 receipts, disbursements, and other financial transactions, available
18 for audit by the state auditor;

19 (11) To create and maintain a list of producers and to disseminate
20 information among and solicit the opinions of producers with respect to
21 the discharge of the duties of the commission, directly or by
22 arrangement with trade associations or other instrumentalities;

23 (12) To employ, designate as agent, act in concert with, and enter
24 into contracts with any person, council, commission, or other entity
25 for the purpose of promoting the general welfare of the forest products
26 industry and particularly for the purpose of assisting in the sale and
27 distribution of Washington forest products in domestic and foreign
28 commerce, expending moneys as it may deem necessary or advisable for
29 such purpose and for the purpose of paying its proportionate share of
30 the cost of any program providing direct or indirect assistance to the
31 sale and distribution of Washington forest products in domestic or
32 foreign commerce, and employing and paying for vendors of professional
33 services of all kinds;

34 (13) To sue and be sued as a commission, without individual
35 liability for acts of the commission within the scope of the powers
36 conferred upon it by this chapter;

37 (14) To propose assessment levels for producers subject to
38 referendum approval under section 11 of this act; and

1 (15) To participate in federal and state agency hearings, meetings,
2 and other proceedings relating to the regulation, production,
3 manufacture, distribution, sale, or use of forest products.

4 NEW SECTION. **Sec. 9.** The commission shall create, provide for,
5 and conduct a research, promotional, and educational campaign as sales
6 and market conditions reasonably require. It shall investigate and
7 ascertain the needs of producers, conditions of markets, and degree of
8 public awareness of products, and take into account the information
9 obtained in the discharge of its duties under this chapter.

10 NEW SECTION. **Sec. 10.** (1) The commission shall cause a list to be
11 prepared of all Washington producers of forest products from any
12 information available from the commission, producers' association, or
13 producers, including tax records from the department of revenue. This
14 list shall contain the names and addresses of all persons who produce
15 forest products within this state, the amount of forest products
16 produced during the period designated by the commission, and the
17 assessment amount for each member. The list is considered confidential
18 and may be reviewed only by the employees of the commission, except for
19 information that may be disclosed to the public and commission members
20 under subsection (4) of this section. A qualified person may, at any
21 time, have his or her name placed upon the list by delivering or
22 mailing the information to the commission. This list shall be
23 corrected and brought up to date in accordance with evidence and
24 information available to the commission on or before December 31st of
25 each year, or as soon thereafter as possible. For all purposes of
26 giving notice and holding referendums, the list on hand, corrected up
27 to the day next preceding the date for issuing notices or ballots as
28 the case may be, is, for purposes of this chapter, the list of all
29 producers entitled to notice or to assent or dissent or to vote.

30 (2) The commission shall develop a reporting system to document
31 that the producers of forest products in this state are reporting
32 quantities of forest products produced and subject to the assessment as
33 provided in section 11 of this act.

34 (3) The department of revenue may charge the commission for the
35 reasonable costs of providing reports of harvest activity on a
36 quarterly basis.

1 (4) Any taxpayer information received by the commission from the
2 department of revenue may only be used for the limited purposes of
3 establishing lists of producers necessary to determine eligibility for
4 voting, eligibility for serving as a commission member, the amount of
5 assessments owed, or other necessary purposes as established by law.
6 Any return or tax information received from the department of revenue
7 may be reviewed only by the employees of the commission. Employees may
8 disclose to the public and commission members a list of commission
9 members, groupings of at least three commission members by the amount
10 of forest products harvested over any time period designated by the
11 commission of at least one quarter, and the members who are eligible
12 for the various positions on the commission.

13 NEW SECTION. **Sec. 11.** (1) To provide for permanent funding of the
14 forest products commission, an assessment shall be levied by the
15 commission on producers of each species of forest products. The
16 initial rate of assessment that shall be submitted for approval by
17 referendum pursuant to section 12 of this act is fifty-seven cents per
18 thousand board feet. The initial assessment is not effective until
19 approved by a majority of producers as required by section 12 of this
20 act.

21 (2) After the initial assessment rate is approved, the commission
22 may adjust the amount of the assessment within a range of forty-five
23 cents up to ninety cents per thousand board feet. The commission shall
24 submit any proposed increase in the assessment to producers pursuant to
25 the referendum process established in this section, and shall supply
26 all known producers with a ballot for the referendum. The commission
27 shall establish the assessment for the marketing year by January 1st of
28 each year, or as soon thereafter as possible. Assessments may only be
29 used for the purposes and objects of this chapter.

30 (3) The forest products commission may raise the assessment on
31 forest products in excess of the fiscal growth factor under chapter
32 43.135 RCW. The assessment limits established by this section are
33 solely to provide prior legislative authority for the purposes of RCW
34 43.135.055 and are not a limit on the authority of the forest products
35 commission to alter assessments in any manner not limited by RCW
36 43.135.055. However, any alteration in assessments made under this
37 section must be made with the procedural requirements established by
38 this chapter for altering such assessments.

1 (4) The requirement for approval of an assessment is met if: (a)
2 At least fifty-one percent by numbers of producers replying in the
3 referendum vote affirmatively, and these producers represent at least
4 sixty-one percent of the volume of the producers replying in the
5 referendum; or (b) sixty-five percent by numbers of producers replying
6 in the referendum vote affirmatively, and these producers represent at
7 least fifty-one percent of the volume of the producers replying in the
8 referendum. An assessment shall only be approved if at least forty
9 percent of the eligible producers participate in the vote.

10 NEW SECTION. **Sec. 12.** (1) For purposes of determining producer
11 participation in the commission, the initial election of commissioners,
12 and for imposition of the original assessment specified in section 11
13 of this act, the director shall conduct a referendum among all
14 producers of forest products within the state.

15 (2) The requirement for approval of the assessment and creation of
16 the commission is met if: (a) At least fifty-one percent by numbers of
17 producers replying in the referendum vote affirmatively, and these
18 producers represent at least sixty-one percent of the volume of the
19 producers replying in the referendum; or (b) sixty-five percent by
20 numbers of producers replying in the referendum vote affirmatively, and
21 these producers represent at least fifty-one percent of the volume of
22 the producers replying in the referendum. The referendum shall only be
23 approved if at least forty percent of the eligible producers
24 participate in the vote.

25 (3) If the director determines that the requisite approval has been
26 given, the director shall declare the establishment of the commission
27 and direct it to put into force the assessment authorized in section 11
28 of this act. If the director finds that the requisite approval has not
29 been given, then this chapter is not operative.

30 NEW SECTION. **Sec. 13.** The commission shall deposit moneys
31 collected under section 11 of this act in a separate account in the
32 name of the commission in any bank that is a state depository. All
33 expenditures and disbursements made from this account under this
34 chapter may be made without the necessity of a specific legislative
35 appropriation. RCW 43.01.050 does not apply to this account or to the
36 moneys received, collected, or expended under this chapter.

1 NEW SECTION. **Sec. 14.** A due and payable assessment levied in the
2 amount determined by the commission under section 11 of this act
3 constitutes a personal debt of every person so assessed, or who
4 otherwise owes the assessment, and the assessment is due and payable to
5 the commission when payment is called for by the commission. If a
6 person fails to pay the commission the full amount of the assessment by
7 the date due, the commission may add to the unpaid assessment an amount
8 not exceeding ten percent of the assessment to defray the cost of
9 enforcing its collection. If the person fails to pay any due and
10 payable assessment or other such sum, the commission may bring a civil
11 action for collection against the person or persons in a court of
12 competent jurisdiction. The action shall be tried and judgment
13 rendered as in any other cause of action for a debt due and payable.

14 NEW SECTION. **Sec. 15.** All county and state law enforcement
15 officers shall assist in the enforcement of this chapter.

16 NEW SECTION. **Sec. 16.** The superior courts are hereby vested with
17 jurisdiction to enforce this chapter and the rules of the commission,
18 and to prevent and restrain violations thereof.

19 NEW SECTION. **Sec. 17.** This chapter shall be liberally construed
20 to effectuate its purposes.

21 **Sec. 18.** RCW 42.17.31907 and 1996 c 80 s 3 are each amended to
22 read as follows:

23 The following agricultural business and commodity commission
24 records are exempt from the disclosure requirements of this chapter:

25 (1) Production or sales records required to determine assessment
26 levels and actual assessment payments to commodity commissions formed
27 under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88,
28 15.-- (sections 1 through 17 and 22 of this act), and 16.67 RCW or
29 required by the department of agriculture under RCW 15.13.310(4) or
30 15.49.370(6);

31 (2) Consignment information contained on phytosanitary certificates
32 issued by the department of agriculture under chapters 15.13, 15.49,
33 and 15.17 RCW or federal phytosanitary certificates issued under 7
34 C.F.R. 353 through cooperative agreements with the animal and plant
35 health inspection service, United States department of agriculture, or

1 on applications for phytosanitary certification required by the
2 department of agriculture; and

3 (3) Financial and commercial information and records supplied by
4 persons to commodity commissions formed under chapters 15.24, 15.28,
5 15.44, 15.65, 15.66, 15.74, 15.88, 15.-- (sections 1 through 17 and 22
6 of this act), and 16.67 RCW with respect to domestic or export
7 marketing activities or individual producer's production information.

8 **Sec. 19.** RCW 43.135.055 and 1997 c 303 s 2 are each amended to
9 read as follows:

10 (1) No fee may increase in any fiscal year by a percentage in
11 excess of the fiscal growth factor for that fiscal year without prior
12 legislative approval.

13 (2) This section does not apply to an assessment made by an
14 agricultural commodity commission or board created by state statute or
15 created under a marketing agreement or order under chapter 15.65 or
16 15.66 RCW, or to the forest products commission, if the assessment is
17 approved by referendum in accordance with the provisions of the
18 statutes creating the commission or board or chapter 15.65 or 15.66 RCW
19 for approving such assessments.

20 NEW SECTION. **Sec. 20.** A new section is added to chapter 82.32 RCW
21 to read as follows:

22 The forest products commission, created pursuant to chapter 15.--
23 RCW (sections 1 through 17 and 22 of this act), constitutes a state
24 agency for purposes of applying the exemption contained in RCW
25 82.32.330(3)(f) for the disclosure of taxpayer information by the
26 department. Disclosure of return or tax information may be made only
27 to employees of the commission and not to commission members.
28 Employees are authorized to use this information in accordance with
29 section 10(4) of this act. Employees are subject to all civil and
30 criminal penalties provided under RCW 82.32.330 for disclosures made to
31 another person not entitled under the provisions of this section or
32 section 10 of this act to knowledge of such information.

33 NEW SECTION. **Sec. 21.** Sections 1 through 17 and 22 of this act
34 constitute a new chapter in Title 15 RCW.

1 NEW SECTION. **Sec. 22.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

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